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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,788	10/12/2001	Peter Bacuerle	10744/7600	2206
26646	7590	12/13/2006	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				BROADHEAD, BRIAN J
		ART UNIT		PAPER NUMBER
		3661		

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/976,788	BAEGERLE, PETER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brian J. Broadhead	3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 November 2006.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,5-12,15,16,18,20-27,30 and 31 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3,5-12,15,16,18,20-27,30 and 31 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .                                                        | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 11-22-06 has been entered.

### ***Res Judicata***

2. Claims 1, 3, 5-12, 15, 16, 18, 20-27, 30, and 31 are rejected on the grounds of res judicata.

3. The claims present subject matter that has already been subject of an appeal and decision before the Board of Patent Appeals and Interferences. The time period for review of this decision has passed. The claim amendment filed simply places dependant claim limitation in the independent claims. These dependant claims were part of the prior appeal and the rejection of these claims was upheld.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3, 5-12, 15, 16, 18, 20-27, 30, and 31 are rejected under 35

U.S.C. 102(b) as being anticipated by Cowan et al., 5029087.

6. As per claims 1, 11, 15, 16, 26, 30, and 31, Cowan et al. disclose the slip of the torque converter is adjusted using a setpoint value, while the torque-converter lockup clutch is being closed, the setpoint value being continuously selected inside a closing interval after the initiation of the closing interval, as a function of time, and taking into account the input torque applied to the torque converter on lines 30-38, on column 4, in figures 5 and 6, and on lines 11-31, on column 13. , Cowan et al. disclose for the time-dependence of the setpoint value, a pre-selected time characteristic is taken into account, which converts the slip existing at the beginning of the closing interval as the initial value, into a target value, within the closing interval on lines 37-65, on column 14, and in figure 6A. Cowan et al. disclose the input torque applied to the torque converter is monitored inside the closing interval, in response to the input torque changing by more than a specifiable tolerance deviation, the slip of the torque converter being ascertained and taken as a basis for a new initial value, which would appear at this input torque in the case of a completely open torque-converter lockup clutch on lines 5-.11, on column 4. Cowan et al. disclose the control unit is connected to a data storage unit, in which a time characteristic for the setpoint value of slip is stored, a slip existing at the beginning of a closing interval as an initial value being converted into a target value within the closing interval, in accordance with the time characteristic for the

setpoint value of the slip, and a slip value can be derived for each input torque, on lines 37-64, on column 14, and reference number 71 in figure 2A.

7. As per claims 3 and 18, Cowan et al. disclose a linear transition from the initial value to the target value is provided as a time characteristic inside the closing interval in Figure 6A.

8. As per claims 5 and 20, Cowan et al. disclose the value resulting from the preselected time characteristic for the current time inside the closing interval is selected as the setpoint value for the slip, the time characteristic converting the initial value ascertained using the currently applied torque into the target value on lines 1-40-, on column 13.

9. As per claims 6, 7, 21, and 22, Cowan et al. disclose the slip to be used as a new initial value, as a basis for the applied input torque is determined using a stored characteristic map in figure 9.

10. As per claims 8, 12, 23, and 27 Cowan et al. disclose in order to adjust the slip, a controlled parameter is provided for setting a clamping pressure for the torque converter on lines 38-45, on column 6.

11. As per claims 9 and 24, Cowan et al. disclose the time characteristic of the slip is monitored for a decline, in order to detect the start of power transmission in the torque converter lockup clutch on lines 2-5, on column 9.

12. As per claims 10 and 25, Cowan et al. disclose after a decrease in the slip detected, a clamping pressure for the torque converter is set as a function of a coupling

torque to be transmitted and a setpoint value for the slip of the torque converter lockup clutch on lines 52-57, on column 8.

***Response to Arguments***

13. Applicant's arguments filed 11-22-06 have been fully considered but they are not persuasive. The arguments address limitations and claims that have already been subject to an appeal and a decision on the appeal. The time period for review of the appeal has passed. Any arguments with respect to the rejection of these claims and limitations should have been raised in the prior appeal.

***Conclusion***

14. This is a continued examination of applicant's earlier Application No. 09767788. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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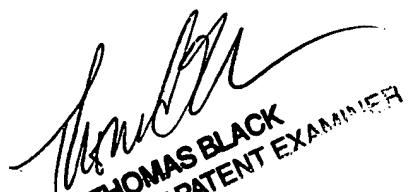
the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Broadhead whose telephone number is 571-272-6957. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black can be reached on 571-272-6956. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular communications and (571) 273-8300 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600.

  
BJB

  
THOMAS BLACK  
SUPERVISORY PATENT EXAMINER